SUPREME COURT, U. S.

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 196[redacted]

No. [redacted] 81

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Petitioner,

vs.

JOHN P. McELROY, T. O. BATTREAL, F. M. BOSTER, J. D. BRIMER, J. D. CAMPBELL, A. A. CAPPER, R. L. CATO, L. A. CHRISMAN, L. R. CLEWIS, J. H. CRAIG, B. DAGGETT, D. E. DWYER, A. G. FISHER, D. M. FORD, J. W. FORSYTHE, O. M. GOLDSMITH, J. D. GUNN, T. F. HAMMONTREE, E. G. HART, J. M. HAY, W. G. HAYES, C. E. HUGHES, J. R. IGGENS, H. R. LAGER, C. M. LEE, J. A. MATHIS, T. C. MAUPIN, R. A. MENSINGER, R. A. NEUPERT, H. P. PARKER, JR., L. C. PAUL, N. A. POSTON, H. G. REESE, R. E. REICH, B. G. REIFSTECK, E. E. REYNOLDS, R. D. RHEINHARDT, L. D. RIPLEY, C. ROBINSON, W. B. ROBINSON, D. D. RUSSELL, G. P. RYAN, R. F. SCHROEDER, D. O. SCHULZ, R. M. SCOTT, C. M. STEVENSON, T. A. SUMMERS, M. THEODORE, P. J. THOMAS, W. P. WHITEHEAD, W. M. WILLIAMS, J. R. WOOD,

and

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Seventh Circuit.

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and

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Seventh Circuit.

Petitioner, Brotherhood of Locomotive Engineers, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in this case on February 28, 1968.

OPINIONS BELOW.

The opinion of the Court of Appeals is set forth in Appendix A, *infra*, pp. 18-29, and is not yet officially reported. The opinion of the District Court for the Eastern District of Illinois is printed at P.A. 35-38 of appellants'

appendix filed in the Court of Appeals which is part of the certified record accompanying this petition.[1] The District Court's opinion (App. B, *infra*, pp. 30-33) is unreported.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 28, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

The bargaining representative for the craft of locomotive engineers negotiated an agreement providing that all locomotive engineers, desiring representation in disciplinary investigations of conduct while working as an engineer and in the processing of grievances arising out of the collective bargaining agreement for that craft, would be required to be represented by the majority representative in those designated procedures for handling with the railroad officers on the property. A group of engineers, all members of a minority union, sought, but were not permitted, to be represented by the minority union in such proceedings. The Court of Appeals determined that the involved contract provisions were invalid on the basis that the Railway Labor Act confers a right to the individual employee of choosing his own representative in the handling of "minor disputes." The basic question presented is

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[1] The appendices to the briefs submitted to the court below by the Petitioner and the individual Respondents herein have been certified as the record for use with this petition. Since the pages have not been renumbered, references herein are to the original pagination. "P.A." refers to Plaintiffs-Appellants' appendix; and "I.A." to Intervenor-Appellee's appendix filed in the Court of Appeals. The certified record also includes the proceedings in the United States Court of Appeals.

whether the Court of Appeals erred in determining that under the Railway Labor Act an employee has the unqualified privilege to choose a minority union to represent him in the handling of grievances with the railroad under the collective agreement negotiated by the craft representative or in carrier conducted investigations, when those proceedings involve interpretation or application of the collective agreement and when the bargaining representative would not have an opportunity to be present at their adjustment. Ancillary thereto is the question presented whether the majority representative may validly enter into contractual provisions requiring all employees in the craft, who desire representation in the grievance and investigation procedures, be represented by the collective bargaining agent.

STATUTE INVOLVED.

The statutory provisions involved are Sections 2, Second, Third, Fourth, Sixth and 3, First (i) of the Railway Labor Act, as amended (45 U. S. C. §§ 152, Second, Third, Fourth, Sixth and § 153, First (i)), which are set forth in Appendix C, *infra*, pp. 33-35.

STATEMENT.

The Brotherhood of Locomotive Engineers ("BLE") is the duly designated collective bargaining representative under the Railway Labor Act of the employees of the Terminal Railroad Association of St. Louis ("TRRA") in the craft of locomotive engineers. BLE has a collective bargaining agreement with TRRA applicable to and governing the work of locomotive engineers employed by TRRA (P.A. 3).

TRRA is a common carrier by railroad engaged in interstate commerce in Missouri and Illinois and subject to the Railway Labor Act (P.A. 2).[2]

The Brotherhood of Locomotive Firemen & Enginemen ("BLF&E") is the collective bargaining representative for TRRA employees in the craft of locomotive firemen, but for no other craft of employees on TRRA (App. A, p. 18; P.A. 3).

The individual respondents are locomotive engineers employed by TRRA and are members of the minority union, BLF&E (App. A, p. 18; P.A. 7-9). The collective agreement between TRRA and BLE specifies the rates of pay, rules and working conditions to which they, and all other engineers, are subject (P.A. 4).

Locomotive engineers, including the individual respondents, may file grievances and monetary claims with TRRA based on alleged violations by the carrier of the collective agreement with BLE. In addition, locomotive engineers are subject to disciplinary proceedings for alleged improprieties or for failure to discharge duties while working in that capacity (P.A. 4, 6).

The collective bargaining agreement between BLE and TRRA establishes procedures for handling such matters in order to determine the contractual validity of the claims or grievances or the merit of carrier imposed discipline, including discharge. If these matters are not adjusted on the property in the manner designated in the collective bargaining agreement, they may be referred to

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[2] TRRA's operations therefore are within both the Seventh and Eighth Circuits. Although the involved provisions would be invalid under the decision of the Court of Appeals herein, their validity would continue in the Eighth Circuit in view of *Brooks v. Chicago, R. I. & P. R. Co.*, 177 F. 2d 385 (8th Cir. 1949) and *Butler v. Thompson*, 192 F. 2d 831 (8th Cir. 1951).

the National Railroad Adjustment Board (P.A. 4, I.A. 1-4).

On November 15, 1965, BLE and TRRA entered into collective agreement provisions providing that the only representative which a locomotive engineer may have in handling grievances and claims arising under the collective agreement between BLE and TRRA would be a representative of BLE. The agreement further provides that the only representative the employee is permitted to have at an investigation conducted by TRRA to determine whether discipline should be imposed for an act or omission occurring while the employee was working as a locomotive engineer is a representative of BLE. Nothing in the agreement prevents the individual engineer from personally handling the claim or disciplinary proceeding on the property nor from using any representative of his choosing to submit and progress the dispute to the National Railroad Adjustment Board for compulsory arbitration[3] (I.A. 1-4).

Since November 15, 1965, 17 of the individual respondents asserted claims against TRRA, which arose in the course of their employment as engineers. One of these 17 respondents and another individual respondent were involved in accident investigations conducted by TRRA, and still another individual respondent was called as a

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[3] This Court's decision in *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711 (1945), has been construed as holding that the individual employee may through any counsel or representative of his selection submit an unadjusted dispute to the National Railroad Adjustment Board (App. A, p. 23). The agreement involved herein is not contrary to that construction. It also should be noted that the agreement does not prohibit the individual from conferring with management about his grievance (I.A. 2), nor does it assume sole power in the bargaining representative to compromise or settle grievances without regard to the wishes of the employee. Thus, the agreement does not conflict with the opinion in *Burley*, even interpreted in the broadest manner possible.

witness in one of the investigations. All of these individuals designated BLF&E, the minority union, to represent them in these proceedings. Pursuant to its agreement with BLE, TRRA refused to permit the respondents to be represented by an official of BLF&E. TRRA declined to consider appeals filed by BLF&E on the 17 time claims on the basis that the agreement permits only the craft representative, BLE, to represent locomotive engineers in the handling of time claims and grievances based on the BLE negotiated collective bargaining agreement, while those disputes are being handled with the carrier officers (P.A. 7-9).

These 19 respondents, joined by 33 other TRRA locomotive engineers who are also members of BLF&E, brought suit against TRRA claiming that the agreement between BLE and TRRA violated the Railway Labor Act in that it would allegedly tend to coerce them into joining BLE thereby interfering with their membership in BLF&E and asking for an injunction preventing TRRA from complying with said agreement (P.A. 11-12). In effect, respondents sought a judgment requiring TRRA to confer and negotiate with BLF&E, the representative designated by said individuals, in settling grievance and disciplinary matters (App. A, p. 18). BLE was granted leave to intervene (P.A. 34).

TRRA filed a motion to dismiss for failure to state a claim of relief and for want of jurisdiction in that the Adjustment Board has exclusive jurisdiction over the question which presented issues of contract interpretation (P.A. 13-19). BLE's answer (P.A. 27-34) raised the defense of lack of jurisdiction, particularly in the context of a jurisdictional dispute between BLE and BLF&E, in addition to the contention that the complaint failed to allege an actionable claim.

The District Court dismissed for want of jurisdiction (App. B, p. 33). Concluding that judicial relief was warranted under the Railway Labor Act, the Court of Appeals for the Seventh Circuit reversed and remanded directing the District Court to enter judgment for the individual respondents. The Court of Appeals said:

> "Our holding is simply that these plaintiffs, already members of the Firemen's union, can designate that union to represent them on the Terminal property and before the National Railroad Adjustment Board with reference to time claims and disciplinary investigations occurring while plaintiffs performed the services of locomotive engineers.[4]

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[4] The purported factual distinction upon which the opinion below appears to be based is that the respondents herein "ebb-and-flow" between the craft of locomotive engineers and the craft of firemen (App. A, p. 26). Therefore, the opinion at one point recognizes that the court might apparently reach the opposite conclusion if non-operating railroad employees were involved, while at other times, the court below indicates the ruling is applicable to employees in the non-operating crafts and also industries covered by the National Labor Relations Act (App. A, pp. 26, 21-22, 24). However, this finding by the court below is based on the allegations of the complaint, and has no other support in the record. Unless the court below intended to carve an exception in the law for the railroad operating crafts, the applicability of this finding would not be relevant. If pertinent to the final decision, it should be noted that at trial BLE would have shown that on the TRRA there is not and has not been any shuttling back and forth of employees between the crafts of locomotive engineers and firemen for several years, that the respondents are and have been engineers for a number of years, that they have not worked as firemen in many years, and that respondents have seniority ranking making it unlikely that they will ever work as locomotive firemen in the future. These circumstances arise, in part, from the fact that many TRRA firemen are "fixtures," that is have declined promotion as engineers, and hold high seniority ranking as firemen. Therefore, many engineers, having junior standing as firemen, would not be able to return to the ranks of firemen if work were unavailable for them as engineers. But, as a result of this purported distinction, the court appears to indicate that BLE and BLF&E have certain undescribed rights in the respective crafts for which each is not majority representative (App. A, pp. 28-29).

To that extent, Articles 34 and 35 of the Terminal-Engineers contract of November 15, 1965 are invalid, but our judgment does not bar the Engineers' union from discussions on the Terminal property or before the National Railroad Adjustment Board when its interests are involved." (App. A, p. 28.)

REASONS FOR GRANTING THE WRIT.

This case raises the question specifically reserved by this Court in *General Committee v. Southern Pacific Co.*, 320 U. S. 338, 344 (1944), as to whether an employee has the unlimited "privilege" to choose any person or union to represent him in the prosecution of claims or grievances with his employer. The Court of Appeals held that the Act grants an employee the unqualified "right"[5] to that choice and, therefore, the majority representative cannot validly contract to itself exclusive representation in the handling of grievance and disciplinary matters before railroad officials. This ruling is important not only to BLE, as the designated bargaining representative of locomotive engineers on TRRA and most of the nation's major railroads, but extends to grievance handling by other railroad bargaining representatives[6] and by collective bar-

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[5] The court below dealt with the problem as involving substantive rights of the individuals, but, in actuality, the case concerns a privilege in the sense the term was employed by this Court in the *Southern Pacific* case. The distinction is probably critical in answering the ancillary question whether the bargaining representative may contract for the legal right to enforce the substantive obligations of the collective agreement in the negotiation of grievances on the property. See Cox, *Rights Under A Labor Contract*, 69 HARV. L. REV. 601, 624 (1956).

[6] On the basis of the best information available to BLE, it appears that in the operating crafts alone, there are about 24 "exclusive representation" agreements with provisions like the involved clauses (I.A. 1-4). BLF&E holds 5 of these agreements. Also, many prevailing agreements restrict representation on the basis of employment with the carrier or on some comparable criteria.

gaining agents in general.[7] The ruling below has additional significance relative to the relationships between those unions which represent the operating crafts in the railroad industry due to the radical changes in the industry which in turn reflect on the status of the various craft representatives—especially locomotive engineers and firemen.

The court's ruling, we submit, is based on the erroneous determination that collective bargaining is limited to negotiation and execution of the basic labor contract, and that, therefore, individual action in the context of grievance handling cannot interfere with the collective bargaining process. It is thus concluded that the majority representative loses its exclusive authority over that agreement once executed. The court's ruling not only conflicts with its previous decisions and those of other circuits, but violates the basic purposes of the Act by negating the authority of the bargaining agent in maintaining intact the labor contract throughout its term. By erroneously finding a statutory purpose of encouraging and, indeed, fostering substantial minority enclaves with-

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[7] The provisos contained in Section 9(a) of the National Labor Relations Act, 29 U. S. C. § 159(a), have been construed to confer a right to minority union representation in grievance matters. *Douds v. Local 1250*, 173 F. 2d 764, 772 (2d Cir. 1949). However, the question herein has not been determinatively resolved under that Act in view of the continuing stature of *NLRB v. Hughes Tool Co.*, 147 F. 2d 69 (5th Cir. 1944). The ruling below would provide additional support for *Douds*, although the latter case has been severely criticized. Sherman, *The Individual and His Grievance—Whose Grievance Is It?*, 11 U. PITT. L. REV. 35, at 38, 55 (1949). While the ruling below used *Douds* as authority, the applicability hereto is questionable, since comparable provisions restricting intervention of the bargaining representative in the adjustment of grievances cannot be found in the Railway Labor Act. However, the ruling below would accord the same privileges to the individual governed by the Railway Labor Act without the two specific statutory safeguards provided in the National Labor Relations Act for the protection of the collective bargaining agreement and the group interests.

in the bargaining unit, the court determined that the Act contains an explicit command or right in the individual to select a minority union to submit and prosecute grievances and other matters pertaining to the collective agreement belonging to the majority representative. This determination is disruptive of peaceful and meaningful labor relations, the absolute foundation of the Act.

1. As the above statement indicates, one of the fundamental errors in the decision of the court below lies in the failure to recognize the continuing nature of collective bargaining, the primary purpose for which the bargaining representative exists. In recognizing that grievance disposition is collective bargaining, this Court has said:

> "Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract." *Conley v. Gibson,* 355 U. S. 41, at 46 (1957).

In *Republic Steel Corp. v. Maddox,* 379 U. S. 650, at 653 (1965), the Court once again stated:

> "Union interest in prosecuting employee grievances is clear. Such activity complements the union's status as exclusive bargaining representative by permitting it to participate actively in the continuing administration of the contract. In addition, conscientious handling of grievance claims will enhance the union's prestige with employees."

As a result of the continuing nature of collective bargaining whereby the handling and adjustment of grievances creates precedent which may prejudice later grievances, may nullify the meaning of specific contractual provisions, or may clarify ambiguities or fill gaps in the labor

contract, it has been advocated that the collective bargaining representative should have complete control of grievances, subject to its duty of fair representation. Cox, *Rights Under A Labor Agreement*, 69 HARV. L. REV. 601, at 625-38 (1956). Apparently accepting the concept that the employer may promise to give the union the only legal right to compromise or enforce substantive obligations under the collective agreement, through the contract grievance procedures, this Court in *Republic Steel Corp. v. Maddox, supra,* at 652-53, went further in saying: "But unless the contract provides otherwise, there can be no doubt that the employee must afford the union the opportunity to act on his behalf." In the instant case, all the majority union assumes through the involved agreement is to be afforded the opportunity to progress those grievances arising under the collective bargaining agreement it negotiated with management. However, the ruling below denies the majority representative the power to contract for the limited right of exclusive representation, which it would already apparently possess as the duly accredited bargaining representative, thereby conflicting with the above pronouncements of this Court.

The court below, however, expresses the view that members of a minority union can only be properly and adequately represented by the rival minority union. If this theory had some basis in the early development of labor law, it is no longer valid and would now appear to be in conflict with this Court's holdings that the majority representative has a statutory duty to fairly represent all persons in the craft, including nonmembers or members of another union.[8] *Vaca v. Sipes,* 386 U. S. 171 (1967).

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[8] The expressions of the court below apparently stem from the Seventh Circuit's refusal to accord the hostile discrimination doctrine the wide scope intended by this Court. See *Pickett v. New York Central R. Co.,* 332 F. 2d 968 (7th Cir. 1964).

Most importantly, by assuming that collective bargaining terminates with execution of the basic contract, the ruling below accords a minority union the right to negotiate on the terms and provisions of that contract in the context of grievance handling. Not only can this lead to inconsistencies in the coliective agreement, it serves to minimize the effectiveness of the bargaining representative and weaken its influence as craft representative. In short, this view which permits the minority union to negotiate with the railroad conflicts with the basic command of the Act that the carrier shall meet and treat with the accredited representative and no other. *Virginian Ry. Co. v. System Federation,* 300 U. S. 515 (1937).

To disregard the needs of the majority of employees in the bargaining unit in having the craft representative maintain the collective agreement and to find an explicit command in the Act creating the right to select minority union representation on the basis that the individual employee may belong to the minority union defies logic and violates the basic purposes of the Act and conflicts with the interpretations of the statutory commands enunciated by this Court.

2. Further, the decision below cannot be reconciled with previous decisions of the Seventh Circuit in *Broady v. Illinois Central R. Co.*, 191 F. 2d 73 (1951), *cert. den.*, 342 U. S. 897 (1951), and *Edwards v. St. Louis-San Francisco R. Co.*, 361 F. 2d 946 (1966), nor with those decisions of the Eighth Circuit in *Brooks v. Chicago, R. I. & Pac. R. Co.*, 177 F. 2d 385 (1949), and *Butler v. Thompson,* 192 F. 2d 831 (1951). The court below improperly limits those decisions by considering them as not involving the situation of employees shuttling back and forth be-

tween crafts (App. A, pp. 26, 28),[9] or concerning an employee seeking representation by a rival union not having a collective bargaining agreement, or challenging the grievance procedures after the Adjustment Board has rendered an interpretation. Those distinctions, however, fail to perceive that in each of the preceding cases the fundamental questions of whether the individual employee has an unqualified right to choose a representative in grievance proceedings on the property and whether, therefore, the majority representative could limit that selection by contract had to be determined prior to reaching the decisions therein.[10] Thus, the propriety of the interpretation of the relevant provisions of the Act set forth in the ruling below warrants review by this Court. In view of the number of cases relating to the basic question of law involved and the inconsistency between these opinions and the ruling herein, there is a clear need for a determinative answer to that question.

3. One of the major purposes of the Act was to reduce or eliminate turmoil and agitation on union matters among railroad employees.[11] The ruling below neverthe-

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[9] See fn. 4, *supra*. Whatever significance this distinction may have to the decision is unknown, for elsewhere in its opinion the Court below indicates that all railroad employees have the right to be represented by minority unions in grievance matters (App. A, p. 21). Thus, those employees in the non-operating crafts, where there is no "ebb-and-flow" between crafts, would also have the right to use a minority union to negotiate on grievances.

[10] See also *D'Elia v. New York, N. H. & H. R. Co.*, 230 F. Supp. 912 (D. Conn. 1964), *aff'd*, 338 F. 2d 701 (2d Cir. 1964), *cert. den.*, 380 U. S. 978 (1965).

[11] Although concerned with the 1951 union shop amendments, the merit and forcefulness of that purpose was laudably expressed in Hearings on H. R. 7789 before Committee of Interstate and Foreign Commerce, 81st Cong. 2d Sess. 11, 22-23 (1950).

less interprets the Act as containing a judicially enforceable explicit command or legal right allowing the employee to select a minority union as his representative in the grievance and investigative procedures with the rail carriers. Therefore, the court views the Act as permitting and encouraging the establishment and continued existence of substantial minority enclaves within the craft.

In support of these expressions, the opinion below twice refers to the union shop provisions contained in Section 2, Eleventh (c) of the Act as establishing the Congressional purpose of fostering minority unions in the railroad operating crafts, a purpose expressed 17 years after passage of the basic Act which was intended to strengthen majority unions and collective bargaining (App. A, pp. 26, 28-29). Upon that basis, the court was persuaded to declare that a locomotive engineer may satisfy the membership requirements of a union shop agreement by belonging to BLF&E, and, in turn, should have the right to designate BLF&E as his representative in grievance proceedings. From these premises, the court concluded that Section 2, Eleventh (c) would be rendered a nullity if BLE's contractual provisions were held valid. That conclusion does not follow.

Nevertheless the necessity of these comments is unclear, because as previously indicated the ruling below extends to the nonoperating crafts and also to collective bargaining agents under the National Labor Relations Act, neither of which are concerned with Section 2, Eleventh (c). In addition, basing the ruling below in part upon the union shop amendments is erroneous, for those provisions do not deal in any manner with representation in disciplinary investigations required by the collective agreement or in the prosecution of grievances. Furthermore, *Pennsylvania R. Co. v. Rychlick*, 352 U. S. 480 (1957), cited by

the court below, is scant authority for the effectiveness of that argument to the question here, since this Court stated that the only purpose of Section 2, Eleventh (c) was a very narrow one, "simply to solve the problem of intercraft mobility under railroad union-shop contracts." *Id.* at 494.

The pronouncements by the Court of Appeals are an extension of its recent expressions on the subject of minority unions in the railroad operating crafts with respect to union shop agreements. *Birkholz v. Dirks*, ___ F. 2d ___ (7th Cir. 1968).[12] It is submitted that case was incorrectly decided because the court misapplied the precepts of *Rychlick*. But even if that ruling were correct, it has no relevancy to the instant question. If no union shop agreement were in effect, the employee could belong to a minority union or no union. Yet, this would not negate the majority representative's authority to negotiate an exclusive representation rule for on property handling of grievances. Taken to its logical conclusion, the ruling below would have that improper effect in the described situation.

Further, the court below failed to perceive that furthering minority unions through use of the grievance procedures effectively undermines the "representative's performance of its functions under the Act." *International Association of Machinists v. Street*, 367 U. S. 740, at 754 (1961). Denying the majority representative power to

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[12] In *Birkholz*, the Seventh Circuit determined that a railroad employee in the operating crafts can satisfy the membership requirements of a union shop agreement by belonging to any one of the five operating craft unions. Thus, an engineer could belong to any of these unions and, under the ruling below, would be entitled to representation by it in grievance matters. Taken together, the two cases effectively fragmentize collective bargaining and representation in the railroad operating crafts.

control the presentation of grievances and thus to control the interpretation and application of the collective agreement offers dissident groups, belonging to rival unions, the opportunity to use the grievance procedures as a vehicle for competition and a means to foster employee dissatisfaction instead of a method of eliminating it. Competition of this nature can deter the bargaining representative from taking responsible positions. Furthermore, the determination by the court below overlooks the group interests of the employees who have chosen the majority representative, their future interests as shaped through the law-making aspects of grievance adjustments, and the present interests of all employees in the group having similar grievances who may gain or lose by the adjustment of the individual's grievance through an improper interpretation or application of the collective agreement.

The clarification of the fundamental rights of the majority representative and the employees as a group and the privileges of the individual employee in this process is an issue of general importance in the administration of the Act and of meaningful labor relations. This case is an appropriate vehicle for the Court to consider and discuss that important issue.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

(February 28, 1968.)

Before HASTINGS, *Chief Judge*, and SCHNACKENBERG and CUMMINGS, *Circuit Judges*.

CUMMINGS, *Circuit Judge*. Plaintiffs are 52 employees of the Terminal Railroad Association of St. Louis ("Terminal") and are members of the Brotherhood of Locomotive Firemen and Enginemen ("Firemen"). Terminal is a switching terminal serving 14 trunk-line railroads in the St. Louis area. It is a common carrier by railroad and subject to the Railway Labor Act (45 U.S.C. § 151 *et seq.*). The complaint alleges that Terminal violated the Railway Labor Act by entering into a November 15, 1965, agreement with the Brotherhood of Locomotive Engineers ("Engineers"), providing that employees working as locomotive engineers must be represented exclusively by the Engineers' union as to grievances processed on the Terminal Railroad, even though the particular employees are members only of the Firemen's union and wish to be represented by that union. Relying on certain provisions of the Railway Labor Act, plaintiffs in effect are seeking a judgment that would require Terminal to confer and negotiate with the Firemen, the representative designated by plaintiffs, in settling grievance and disciplinary matters.

Plaintiffs began their employment with Terminal as locomotive firemen, and their rates of pay, rules of employment and working conditions were established pursuant to collective bargaining agreements between the Firemen and Terminal. They were later promoted to locomotive engineers and have seniority status in both crafts. They shuttle back and forth between the two crafts, depending upon the needs of Terminal. When their seniority stand-

ings on the engineers' seniority roster are insufficient to permit their continuing work in that craft, they work in the craft of locomotive firemen. When they work as firemen, the collective bargaining contract between the Firemen and Terminal establishes the applicable rates of pay and working conditions; when they work as engineers, the bargaining contract between the Engineers and Terminal governs such matters.

While 17 of the plaintiffs were working as locomotive engineers, they filed time claims with Terminal. These claims were denied at the initial level on Terminal's property. Thereafter, the Firemen's union appealed the claims to Terminal's General Superintendent and then to its Manager of Labor Relations. These officials denied the appeals on the ground that the November 15, 1965, agreement between Terminal and the Engineers permits only the Engineers' union to represent locomotive engineers in the handling of time claims and grievances.

One of said 17 plaintiffs and another plaintiff were involved in accident investigations conducted by Terminal, and still another plaintiff was called as a witness in one of the investigations, but Terminal refused to permit them to be represented by the Firemen because of the November 15, 1965, agreement between Terminal and the Engineers.

These 19 plaintiffs were joined in the litigation by 33 other employees of Terminal who are also members of the Firemen and sometimes work as locomotive engineers. All 52 asked the District Court to void Articles 34 and 35 of the November 15, 1965, Terminal-Engineers' contract as violative of the Railway Labor Act.

Prior to the November 15, 1965, agreement between Terminal and the Engineers, the railroad had for many years permitted locomotive engineers who were members of the Firemen to be represented by that union for the purpose of settling their grievance or disciplinary problems

on the property. Subsequently, Terminal has refused to permit the Firemen's union to handle such matters. The reason for this refusal is that Article 34 of the November 15, 1965, agreement between the Engineers and Terminal limits the representation of individual locomotive engineers in the handling of time claims or grievances to the Engineers' union, and Article 35 similarly permits only the Engineers' union to represent individual engineers during the investigation of cases involving their suspension or dismissal.

The District Court permitted the Engineers to intervene and subsequently dismissed the action, holding that the National Railroad Adjustment Board has exclusive jurisdiction over this type of controversy. Concluding that judicial relief is warranted under the Railway Labor Act, we reverse.

This case presents for decision the question left open in *General Committee v. Southern Pacific Co.*, 320 U.S. 338, 344, namely, whether an employee's assertion of "the privilege of choosing his own representative for the prosecution of his [grievance] claims" under the Railway Labor Act is justiciable. Two courts of appeals and then Attorney General Tom C. Clark have ruled that he has such a privilege,[1] and we agree with their conclusions. Because there is such a privilege, federal court jurisdiction follows.

Ever since *Texas and New Orleans R. Co. v. Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548,[2]

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[1] *Estes v. Union Terminal Co.*, 89 F.2d 768, 770 (5th Cir. 1937); *General Committee v. Southern Pacific Co.*, 132 F.2d 194 (9th Cir. 1942), reversed on jurisdictional grounds, 320 U.S. 338; 40 Op. A. G. 949 (1946).

[2] This holding was justified by H. R. Rep. No. 328, 69th Cong., 1st Sess., pp. 1-2, where the House Committee on Interstate and Foreign Commerce expressed the desirability of judicial aid to settle questions under the Railway Labor Act.

the federal courts have consistently held that Congress intended them to enforce the commands of the Railway Labor Act.[3] Therefore, if the Railway Labor Act accords these plaintiffs the right to designate the Firemen's union as their representative for settling grievances, the District Court did have jurisdiction to award appropriate relief unless jurisdiction over this dispute has been granted exclusively to the National Railroad Adjustment Board.

The Railway Labor Act has divided disputes between carriers and their employees into two classes. The major disputes concern the making and maintaining of collective bargaining agreements, whereas the minor disputes concern grievances and contract interpretation or application questions.[4] Of course, as to major disputes, it is unquestioned that the Engineers' union is exclusively entitled to represent the plaintiffs, when working as locomotive engineers, by virtue of Section 2 Ninth of the Railway Labor Act. See *Virginian Railway v. System Federation No. 40*, 300 U.S. 515.

Section 2 Second of the Railway Labor Act provides that all disputes shall be considered "in conference between *representatives designated* and authorized so to confer, respectively, by the carrier or carriers and *by the employees* thereof interested in the dispute" (45 U.S.C. § 152 Second; italics supplied). On its face, this provision guarantees an individual employee the right to prosecute his grievances through any representative he may designate. This reading of Section 2 Second is buttressed by the

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[3] *Virginian Railway v. System Federation No. 40*, 300 U.S. 515; *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192; *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768; *Brotherhood of Railroad Trainmen v. Chicago River & Indiana R. Co.*, 353 U.S. 30; *Felter v. Southern Pacific Co.*, 359 U.S. 326.

[4] *Brotherhood of Railroad Trainmen v. Chicago River & Indiana R. Co.*, 353 U.S. 30, 33.

legislative history of the Railway Labor Act of 1934. In the House hearings, both Commissioner Eastman and George Harrison, the spokesman for the standard railroad labor unions, expressed the view that railroad employees have the right to be represented by minority unions in grievance matters.[5] This construction is consonant with other provisions of the Railway Labor Act. Thus Section 2 Third permits employees and carriers to designate representatives without interference from either side, and the representatives of the employees need not even be employees of the carrier. Section 2 Fourth permits individual employees or their local representatives to confer with management during working hours without loss of time.[6] As to minor disputes, Section 2 Sixth provides that the designated representatives of the employees and carriers have the duty to specify the time and place for a conference within ten days after receipt of notice. In Section 3 First (j), Congress concededly granted employees the right to choose any representatives to act on their behalf in handling minor disputes before the National Railroad Adjustment Board. This is also indicative of a similar Congressional intent as to the preliminary negotiations with the carrier.

The provisions in Section 3 First (i) that minor disputes "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes" is pertinent too. Admittedly, it was the customary practice on the Terminal for

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[5] Hearings of House Committee on Interstate and Foreign Commerce (73rd Cong., 2d Sess.) on H. R. 7650, pp. 44, 89.

[6] In *General Committee v. Missouri-Kansas-Texas R. Co.*, 320 U.S. 323, 331, the Court recognized that the commands of Sections 2 Third and 2 Fourth are judicially enforcible. As to Section 2 Second, a similar indication appears in *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 200.

a fireman working as a locomotive engineer to select the Firemen's union as his representative for grievance purposes. The Congressional approval of the "usual manner" of handling grievances shows that the Railway Labor Act was not intended to thwart the established practice in this respect.

Besides the foregoing statutory provisions, the landmark case of *Elgin, Joliet and Eastern Railway Co. v. Burley*, 325 U.S. 711, sheds light on this problem. There it was determined that individual employees have the right to present their grievances to the National Railroad Adjustment Board. The Court held that "the individual employee's rights cannot be nullified merely by agreement between the carrier and the union. They are statutory rights, which he may exercise independently or authorize the union to exercise in his behalf." 325 U.S. at p. 740, note 39.[7] Under that interpretation of the Railway Labor Act, it is clear that the Terminal and Engineers cannot nullify these plaintiffs' rights to select the Firemen's union as their representative for grievance purposes. The *Burley* case teaches that individual rights of employees, such as those advanced here, cannot be nullified unless Congress clearly intended such consequences (325 U.S. at pp. 733-734). No such intent is expressed by the language of the Railway Labor Act. In fact, as seen, the statutory language supports plaintiffs.

In *Burley*, it was noted that the individual employee's ideas of appropriate settlement might differ from the union's, so that an individual employee should be permitted to reject a union settlement of a minor dispute unless he had authorized the union to represent him

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[7] The importance of individual choice was also stressed in *Felter v. Southern Pacific Co.*, 359 U.S. 326, 333-334, when dealing with Section 2 Eleventh (b) of the Act.

(325 U.S. at p. 736). Similarly, if, as here, individual employees do not care to be represented by the majority union in the processing of minor disputes, they should be able to choose their own union for that purpose. Judge Learned Hand so recognized under the Labor Management Relations Act in *Douds v. Local 1250*, 173 F.2d 764, 772 (2d Cir. 1949):

> "There only remains the question whether an individual employee or a minority—a 'group'—must negotiate the adjustment of their 'grievance' without the help of a union which it has been their custom to use as their representative. We have little to add to what we said before. Behind the whole Act, indeed, its main presupposition, is the assumption that in industrial negotiations an individual, or a minority, does not bargain on equal terms with an employer. It is not reasonable to suppose that Congress, after giving a minority this privilege, should wish to deprive it of that means of exercising it, which for this reason is the putative condition of its effective use." [8]

Likewise, in *General Committee v. Southern Pacific Co.*, 132 F.2d 194, 198 (9th Cir. 1942), reversed on jurisdictional grounds, 320 U.S. 338, the court pointed out the injustice of having one union represent inter-craft employees, some being members of another union, with rival seniority claims. The court observed that "confidence and trust necessary between a suitor and his representative" would be absent if the employees were required to be represented by unions of which they were not members.

Terminal and the Engineers urge that the National Railroad Adjustment Board has exclusive jurisdiction

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[8] In *Douds*, Judge Hand approved of and followed Attorney General Tom C. Clark's opinion that the Railway Labor Act invalidates a collective bargaining agreement that prevents an individual from negotiating with the carriers through his own union representative in settling grievances. See 173 F.2d at p. 773.

to determine the validity of the clauses in the Terminal-Engineers contract making the Engineers' union the exclusive representative of locomotive engineers in settling grievances and disciplinary matters. However, the Supreme Court has decided that contract validity questions are for the courts and not for the Adjustment Board. *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 774; *Felter v. Southern Pacific Co.*, 359 U.S. 326, 327, note 3. As in *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 205, the Adjustment Board will not give the relief sought here,[9] so that judicial intervention is necessary.

In an effort to show that the courts have no jurisdiction of this controversy, the Terminal and Engineers lean heavily on *General Committee v. Southern Pacific Co.*, 320 U.S. 338. There the Engineers' union sued for a declaratory judgment that the collective bargaining agreement between the Firemen's union and the Southern Pacific Railway was invalid because it permitted engineers belonging to the Firemen's union to have that union represent them in the handling of their grievances. Following two opinions handed down the same day,[10] the Court concluded that Congress left such "jurisdictional controversies between unions to agencies or tribunals other than the courts" (at p. 344). The dispute there was a pure jurisdictional dispute because the agreement in question did not detract from possible employee rights, but

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[9] See *General Committee v. Southern Pacific Co.*, 132 F.2d 194, 201 (9th Cir. 1942), reversed on jurisdictional grounds, 320 U.S. 338; *United Railroad Workers of America v. Atchison, Topeka & Santa Fe R. Co.*, 89 F.Supp. 666, 668 (N.D. Ill. 1950); *Switchmen's Union v. Louisville & Nashville R. Co.*, 130 F.Supp. 220, 223-224 (W.D. Ky. 1955).

[10] *Switchmen's Union v. National Mediation Board*, 320 U.S. 297; *General Committee v. Missouri-Kansas-Texas R. Co.*, 320 U.S. 323.

adversely affected only the Engineers' union. Here the individual plaintiffs who work as engineers are adversely affected by the Terminal-Engineers' contract. The question of their right to judicial relief was not involved in the *Southern Pacific* case and was expressly left open (*ibid.*). The Supreme Court's decision in the related *M-K-T* case recognizes that federal courts do have jurisdiction to enforce the commands of the Railway Labor Act (320 U.S. at pp. 329-331), and there is such a command here.

At the oral argument, the Engineers' union admitted it could sue Terminal for breach of contract if Terminal allowed the Firemen's union to represent plaintiffs in these minor disputes. In such a suit, Terminal could raise the invalidity of Articles 34 and 35 as a defense, rendering the issue justiciable. To our mind, Congress certainly did not intend the unfair result of making this question of justiciability depend solely on the carrier's unilateral decision as to whether or not to abide by its contract.

Terminal and Engineers rely on *Broady v. Illinois Central R. Co.*, 191 F.2d 73 (7th Cir. 1951), certiorari denied, 342 U.S. 897; *Edwards v. St. Louis-San Francisco R. Co.*, 361 F.2d 946 (7th Cir. 1966); *Brooks v. Chicago, Rock Island & Pacific R. Co.*, 177 F.2d 385 (8th Cir. 1949), and *Butler v. Thompson*, 192 F.2d 831 (8th Cir. 1951). Those cases did not involve the unique situation presented here where employees shuttle back and forth between their crafts. Here, by virtue of Section 2 Eleventh (c) of the Railway Labor Act, the plaintiffs have the right to maintain their membership in the Firemen's union even while working as engineers. See *Pennsylvania R. Co. v. Rychlik*, 352 U.S. 480; *Birkholz v. Dirks*, ____ F.2d ____ (7th Cir. 1968).

In *Broady*, the employee sought to be represented not by a union with a collective bargaining contract with

the railroad, but by a "rival union."[11] *Broady* is not determinative, for this Court did not construe Section 2 of the Railway Labor Act nor discuss the *Burley* case, and Section 2 Eleventh (c) of the Act was not brought to the Court's attention. Since the *Howard* and *Felter* cases had not yet been decided (*supra*, p. 7), one basis for the *Broady* decision was apparently the then prevalent notion that the federal courts had no jurisdiction to pass upon this kind of controversy; the same is true with respect to *United Railroad Workers v. Atchison, Topeka & Santa Fe R. Co.*, 89 F.Supp. 666 (N.D. Ill. 1950). It and *Butler* and *Roberts v. Thompson*, 107 F.Supp. 775 (E.D. Ark. 1952), are likewise distinguishable because they are "rival union" cases. The Terminal and Engineers rely too on *Switchmen's Union v. Louisville & Nashville R. Co.*, 130 F.Supp. 220 (W.D. Ky. 1955), but that opinion was based on the *Broady* and *United Railroad Workers* cases, neither of which is dispositive of the problem at hand.

Edwards did not involve the question whether employees are entitled to be represented by unions of their own choice in grievance matters. The principal question involved was an interpretation of Article 40 of the collective bargaining agreement between the Order of Railway Conductors & Brakemen and the Frisco, a question committed exclusively to the National Railroad Adjustment Board under *Order of Railway Conductors v. Pitney*, 326 U.S. 561, and *Slocum v. Delaware, Lackawanna & Western R. Co.*, 339 U.S. 239.

Edwards and *Brooks* and other cases on which the

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[11] The term "rival union" as used herein excludes those unions defined in Section 2 Eleventh (c) of the Railway Labor Act and qualified by the National Mediation Board.

Terminal and Engineers rely[12] involve efforts of an employee to set aside an unfavorable grievance decision by challenging the procedures through which it was reached. Such efforts are frowned upon by the courts, for grievance procedures are supposed to be a substitute for litigation. The instant plaintiffs are not trying to overturn unfavorable grievance decisions, so that appellees' cases challenging grievance decisions are not controlling.

It is unnecessary to decide whether the Railway Labor Act would entitle plaintiffs to designate a minority union seeking to dislodge Engineers' union. Our holding is simply that these plaintiffs, already members of the Firemen's union, can designate that union to represent them on the Terminal property and before the National Railroad Adjustment Board with reference to time claims and disciplinary investigations occurring while plaintiffs performed the services of locomotive engineers. To that extent, Articles 34 and 35 of the Terminal-Engineers contract of November 15, 1965, are invalid, but our judgment does not bar the Engineers' union from discussions on the Terminal property or before the National Railroad Adjustment Board when its interests are involved.

Finally, it should be noted that our holding does not encourage the formation of a new minority union. *Cf. Pennsylvania R. Co. v. Rychlik*, 352 U.S. 480. The Firemen's union was long established as the authorized bar-

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[12] *D'Elia v. New York, New Haven & Hartford R. Co.*, 230 F.Supp. 912 (D. Conn. 1964), affirmed, 338 F.2d 701 (2d Cir. 1964), certiorari denied, 380 U.S. 978; *D'Amico v. Pennsylvania R. Co.*, 191 F.Supp. 160 (S.D.N.Y. 1961), and *Brooks* concerned the alleged right to counsel during grievance proceedings on the railroad property and not the question whether employees have the statutory right to be represented in minor disputes by their union.

gaining representative of these plaintiffs and, as noted, is within the protection of Section 2 Eleventh (c) of the Railway Labor Act. These two unions have lived together and with railroad employers for a long time. To allow the Firemen's union to continue to represent its members in grievance matters would hardly change the balance of power and certainly would not inject a new union into the situation. *Cf. Pennsylvania R. Co. v. Rychlik*, 352 U.S. 480. Section 2 Eleventh (c) of the Act provides that an employee need belong only to one union. Logically, that union should have the right to represent him in grievance proceedings. If appellees were to prevail, Section 2 Eleventh (c) would be rendered a nullity as to these plaintiffs. The "membership" conferred by that Section would, for them, be a naked legal right unaccompanied by any of the ordinary material benefits of belonging to a union. Although our decision means that members of the Firemen's union may have their union represent them in grievances arising while they work as engineers, it also means that members of the Engineers' union have the right to be represented by that union in grievances while they work as firemen. Thus, our decision puts the two unions on a parity with each other and should not cause defections in either direction. In contrast, the effect of the November 15, 1965, agreement between Terminal and the Engineers would discourage membership in the Firemen's union by making it impossible for plaintiffs to be represented by that union in minor disputes.

The judgment is reversed and the cause is remanded with directions to enter judgment for plaintiffs in conformity with this opinion.

APPENDIX B.

OPINION OF THE DISTRICT COURT.

(Filed Jan. 13, 1967.)

Juergens, Chief Judge

Plaintiffs filed their suit, alleging jurisdiction under Title 28, Sections 1331 and 1337, and the Railway Labor Act, Title 45, Section 151, et seq.

Generally stated, the complaint alleges that defendant is a corporation organized under the laws of the State of Missouri and is engaged in conducting railroad operations and is engaged in interstate commerce; that plaintiffs are employees of defendant; that they began their employment as locomotive firemen and have subsequently qualified as locomotive engineers; that locomotive engineers employed by defendant are represented, for the purposes of the Railway Labor Act, by a railway labor organization known as the Brotherhood of Locomotive Engineers (BLE), which union has from time to time negotiated collective agreements with the defendant for the purpose of establishing rates of pay, rules, etc., governing employment of locomotive engineers on the defendant railroad; that due to seasonal, economic and other considerations, the amount of traffic handled and the switching services performed by the defendant varies from time to time and the number of locomotive engineers and locomotive firemen needed by defendant to perform its services varies; that to meet the varying needs for engineers and firemen, there have been established an engineers' schedule agreement and a firemen's schedule agreement, which contain uniform and reciprocal rules and conditions that enable the employees comprising the firemen's craft and the employees comprising the engineers' craft to shuttle back and forth between the two crafts; that when the plaintiffs

are working as firemen, their employment is governed by the rules contained in the firemen's schedule agreement, and when employed as engineers, the rate of pay, rules and conditions are governed by the engineers' schedule agreement; that in the course of plaintiffs' employment as engineers, grievances and time claims frequently develop and become the subject of disputes; that the grievances and claims are normally presented to defendant's operating officials and are processed in negotiations with defendant's representatives or sometimes presented to the National Railroad Adjustmeent Board; that prior to November 15, 1965, grievances and claims arising while plaintiffs worked as engineers were subject to the terms and conditions of the engineers' schedule agreement and were customarily presented to the defendant and processed by a representative of the railway labor union of which plaintiffs were members, whether the union be the BLE or other railway labor unions; that on November 15, 1965, the defendant and the BLE entered into an agreement which compelled plaintiffs and other employees of defendant in positions similar to plaintiffs to select only the BLE to be plaintiffs' representative for the purpose of processing and seeking settlement of grievances developing while plaintiffs are employed as locomotive engineers; that subsequent to entering into the agreement, plaintiffs have had claims develop while working as locomotive engineers and have requested the representative of a railway labor organization other than the BLE to process and seek a satisfactory settlement of the claims with the defendant; that the claims were denied; thereafter, the representative of a railway labor union of which claimants are members appealed the claims to defendant's General Superintendent who declined to consider the claims for the reason that the agreement concluded by

the defendant and BLE permits an individual engineer to be represented in the handling of claims or grievances only by that union; that the claims were subsequently appealed to defendant's Manager of Labor Relations and were again denied for the same reason. Plaintiffs seek to have this Court adjudge that the agreement of November 15, 1965 violates the duty imposed upon the carriers by the Railway Labor Act and that by entering into the agreement defendant violated plaintiffs' rights under the Railway Labor Act.

The BLE has filed its motion to intervene as a defendant. The Court has considered the motion and finds that it is well taken. An order will be entered joining the Brotherhood of Locomotive Engineers as a party defendant.

The original defendant and the intervening defendant have both filed motion to dismiss, alleging, among other things, that this Court lacks jurisdiction to entertain the cause of action here presented in that the Railway Labor Act makes provisions for the dispositions of matters presented and provides administrative remedy which gives exclusive jurisdiction for the hearing and settlement of disputes of the type here involved.

The United States District Court for the Western District of Kentucky had for consideration in *Switchmen's Union v. Louisville and Nashville R. Co.*, 130 F. Supp. 220, a matter quite similar to the one presented here. Chief Judge Shelborne in a very thorough manner examined the matters presented and found that the Court had no jurisdiction to entertain the cause, finding that administrative remedies provided exclusive jurisdiction. The reasoning and conclusion reached in Switchmen's Union (*supra*) are equally applicable to the factual situation presented here.

The complaint and cause of action will be dismissed for want of jurisdiction.

WILLIAM G. JUERGENS,
Chief Judge.

Dated: June 12, 1967.

APPENDIX C.

STATUTES INVOLVED.

Title 45 U. S. C.

§ 152.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of em-

ployees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so

specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

§ 153, First.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.